

## SENATE BILL No. 233

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-2.5.

**Synopsis:** Streamlined sales tax conformity. Adds definitions of the following terms from the Streamlined Sales and Use Tax Agreement (SSUTA) to the sales and use tax statutes: (1) "digital audiovisual works"; (2) "digital audio works"; (3) "digital books"; and (4) "specified digital products". Amends the definition of "durable medical equipment" to conform with SSUTA. Delays until January 1, 2010, the date when sales of floral products will be sourced to the location of the floral business that takes a floral order from a purchaser, to conform with SSUTA. Provides that a person who transfers specified digital products to an end user with a grant of permanent use is a retail merchant making a retail transaction.

**Effective:** Upon passage; January 1, 2008 (retroactive); January 1, 2009.

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**Kenley**

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January 8, 2008, read first time and referred to Committee on Tax and Fiscal Policy.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## SENATE BILL No. 233

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 6-2.5-1-16.2 IS ADDED TO THE INDIANA  
2       CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3       [EFFECTIVE JANUARY 1, 2009]: **Sec. 16.2. (a) "Digital audio**  
4       **works" means works that result from the fixation of a series of**  
5       **musical, spoken, or other sounds, including ringtones.**

6       **(b) As used in this section, "ringtones" means digitized sound**  
7       **files that:**

8               **(1) are downloaded onto a device; and**

9               **(2) may be used to alert the customer with respect to a**  
10              **communication.**

11       SECTION 2. IC 6-2.5-1-16.3 IS ADDED TO THE INDIANA  
12       CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
13       [EFFECTIVE JANUARY 1, 2009]: **Sec. 16.3. "Digital audiovisual**  
14       **works" means a series of related images that, when shown in**  
15       **succession, impart an impression of motion, together with**  
16       **accompanying sounds, if any.**

17       SECTION 3. IC 6-2.5-1-16.4 IS ADDED TO THE INDIANA



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CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
[EFFECTIVE JANUARY 1, 2009]: **Sec. 16.4. "Digital books" means works that are generally recognized in the ordinary and usual sense as books.**

SECTION 4. IC 6-2.5-1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. (a) "Durable medical equipment" means equipment, including repair and replacement parts for the equipment, that:

- (1) can withstand repeated use;
- (2) is primarily and customarily used to serve a medical purpose;
- (3) generally is not useful to a person in the absence of illness or injury; and
- (4) is not worn in or on the body.

The term does not include mobility enhancing equipment.

(b) **As used in this section, "repair and replacement parts" includes all components or attachments used in conjunction with durable medical equipment.**

SECTION 5. IC 6-2.5-1-26.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 26.5. "Specified digital products" means electronically transferred:**

- (1) **digital audio works;**
- (2) **digital audiovisual works; or**
- (3) **digital books.**

SECTION 6. IC 6-2.5-4-16 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 16. A person is a retail merchant making a retail transaction when the person:**

- (1) **electronically transfers specified digital products to an end user; and**
- (2) **grants the right of permanent use of the specified digital products to the end user that is not conditioned upon continued payment by the purchaser.**

SECTION 7. IC 6-2.5-13-1, AS AMENDED BY P.L.145-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: Sec. 1. (a) As used in this section, the terms "receive" and "receipt" mean:

- (1) taking possession of tangible personal property;
- (2) making first use of services; or
- (3) taking possession or making first use of digital goods;

whichever comes first. The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

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(b) This section:

(1) applies regardless of the characterization of a product as tangible personal property, a digital good, or a service;

(2) applies only to the determination of a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product; and

(3) does not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.

(c) This section does not apply to sales or use taxes levied on the following:

(1) The retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes. These items must be sourced according to the requirements of this article.

(2) The retail sale, excluding lease or rental, of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (g). The retail sale of these items shall be sourced according to the requirements of this article, and the lease or rental of these items must be sourced according to subsection (f).

(3) Telecommunications services, ancillary services, and Internet access service shall be sourced in accordance with IC 6-2.5-12.

(d) The retail sale, excluding lease or rental, of a product shall be sourced as follows:

(1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(2) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.

(3) When subdivisions (1) and (2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(4) When subdivisions (1), (2), and (3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

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(5) When none of the previous rules of subdivision (1), (2), (3), or (4) apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).

(e) The lease or rental of tangible personal property, other than property identified in subsection (f) or (g), shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (d). Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (d).

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or an accelerated basis, or on the acquisition of property for lease.

(f) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (g), shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in

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accordance with the provisions of subsection (d).  
 This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(g) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (d), notwithstanding the exclusion of lease or rental in subsection (d). As used in this subsection, "transportation equipment" means any of the following:

(1) Locomotives and railcars that are used for the carriage of persons or property in interstate commerce.

(2) Trucks and truck-tractors with a gross vehicle weight rating (GVWR) of ten thousand one (10,001) pounds or greater, trailers, semitrailers, or passenger buses that are:

(A) registered through the International Registration Plan; and

(B) operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(3) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(4) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (1) through (3).

(h) This subsection applies to retail sales of floral products that occur before January 1, ~~2008~~ **2010**. Notwithstanding subsection (d), a retail sale of floral products in which a florist or floral business:

(1) takes a floral order from a purchaser; and

(2) transmits the floral order by telegraph, telephone, or other means of communication to another florist or floral business for delivery;

is sourced to the location of the florist or floral business that originally takes the floral order from the purchaser.

**SECTION 8. An emergency is declared for this act.**

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